CASES CITED

Baker v. Carr, 369 U.S. 186 2

Powell v. McCormack, 395 U.S. 486 2

State ex inf. Dalton v. Mosley, 365 Mo. 711, 286 S.W.2d 721 2

State ex inf. McKittrick v. Graves, 346 Mo. 990, 144 S.W.2d 91 3

State ex inf. McKittrick v. Wymore, 345 Mo. 169, 132 S.W.2d 979 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 606

THE STATE OF MISSOURI ON THE INFORMATION OF JOHN C. DANFORTH, ATTORNEY GENERAL,
Petitioner,

vs.

J. B. "JET" BANKS,
Respondent.

ON PETITION FOR CERTIORARI TO THE SUPREME COURT OF MISSOURI

PETITIONER'S REPLY BRIEF

ARGUMENT

I.

The major portion of the Brief in Opposition touches and concerns the merits, as described in our petition. We have the following additional obeservations:

(a) Since the court below ruled the case on Motion to Dismiss, the petitioner's factual contentions are taken as

true, in accordance with the universal rule of pleading. The court below decided the case on its conception of the governing law, without determining any facts.

(b) The quotations on page 7 of the Brief in Opposition, from Baker v. Carr, 369 U.S. 186 and Powell v. McCormack, 395 U.S. 486, are fully and adequately answered in Footnote 1 of the concurring opinion of Judge Seiler, as set out in Appendix B-4 to the petition, page 31.

II.

The case of State ex inf. McKittrick v. Wymore, 345 Mo. 169, 132 S.W.2d 979 (1939), cited in the petition, shows definitely and certainly that the case is not rendered moot by the expiration of the term for which the respondent was elected. Since respondent asserts mootness without discussing this case, the details have some significance.

In **Wymore** it was charged that the respondent, a prosecuting attorney, had forfeited his office and that his continued tenure rendered him an usurper. Before the case was determined the respondent's term expired and he was elected to another term. The court held that the case was not moot. It found that the charges of usurpation had been established, and assessed a fine against respondent for his usurpation during the prior term. The court did not disturb the respondent in his current term, because no charges were made about anything except the prior term.

The Missouri court could obviously take similar action in this case, and would do so, but for the obstacle of the federal question which it erroneously failed to decide.

A fine is the usual and established procedure in Missouri when a public officer is determined to be a usurper. The fine is assessed in civil quo warranto proceedings such as this one. State ex inf. Dalton v. Mosley, 365 Mo. 711, 286

S.W.2d 721 (1956); State ex inf. McKittrick v. Graves, 346 Mo. 990, 144 S.W.2d 91 (1940).

Respectfully submitted,

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